THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 6090 of 2004

Date of Decision: 13 - 10 - 2006

Krishan Dev Jain **.....Petitioner**

v.

Ranjit Kaur etc. **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Kanwaljit Singh, Advocate
for the petitioner.

Mr.M.L.Saggar, Advocate
for the respondents.

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P.S.PATWALIA, J.

The present revision petition has been filed by the tenant against order dated 30.9.1999 passed by the learned Rent Controller, Samrala evicting him from the shop in his possession and the order dated 14.10.2004 passed by the learned Appellate Authority, Ludhiana dismissing the appeal filed by the petitioner-tenant. The eviction has been ordered on the ground that the shop has become unfit and unsafe for human habitation, as also on the ground of personal necessity of petitioner Sukhdev Singh, respondent herein.

The order of the learned Rent Controller on the issue of the shop having become unfit and unsafe for human habitation would show that the landlord had relied upon a report given by the Building Expert stating that the roof of the shop was kacha on the top which made the rain water to percolate causing leakage and dampness. There was a crack in the north west corner of the wall

which ran from top to bottom and separated the northern wall to western wall. The western wall of the shop has bulged out towards deodi by about 3 inches at the roof level by full length and a crack had developed in the south west corner. Due to thermal expansion the front wall of the shop has been pushed outwards by 2 -1/2 inches at the roof level for the full length and the cement had broken at a number of places. The mortar has run out of joints making the masonary structure very weak. It was further stated that the front Banera of the shop had already collapsed.

As against this, learned counsel for the tenant had stated that the front portion of the shop was made to fall by the landlord. He further stated that the roof of the shop was in effective control of the landlord and the petitioner was not allowed to use the same and he had to file a suit for permanent injunction against the landlord which was decreed in his favour. He further submitted that no other independent evidence was produced by the landlord in support of their claim that the shop had become unfit and unsafe for human habitation except the report of the Building Expert.

The Rent Controller on a consideration of the matter found that the shop had become unfit and unsafe for human habitation. It was the admitted position that front Banera of the shop had fallen down. In fact the tenant in his statement as RW-3 admitted that front portion and back portion of the shop had fallen down. The relevant observations of the Rent Controller are as hereunder:-

> ".....The respondent in his statement as RW-3 has admitted that it is correct that the front portion and back portion of the shop has fallen down. ...."

Thereafter the following finding was recorded to hold that the shop had become totally unfit and unsafe for human habitation:-

> ".....Ex.P2 and Ex.P3 proved by the petitioners it is very much clear that the front wall of the shop in question is in very bad condition. There is no cement on the joins and the mortar has run out of the

joints and the bricks are about to come out from these places. The perusal of photographs Ex.PJ which is Ex.P11 also showed that the Walls have been separated from each other and this separation can only be possible due to thermal expansion. From overall condition of the shop it seems that the shop is beyond repair and it can collapse at any time and moreover the question of repair or re-construction is a matter which is to be considered by the landlord and the contention of the respondent that the premises could be repaired is not tenable. The authority 1984(1) Rent Control Reports 213 Punjab & Haryana High Court is fully applicable to the facts of the instant case wherein the Hon'ble High Court has also rejected the contention of the tenant of repair. Moreover the shop in question seems to be beyond repair and even if the shop which has turned into a very bad conditions remains intact for some time. It is not intention of law that the tenant can not be evicted from the same, till it falls down. Here, I find support from 1988(1) Rent Control Report 120 Punjab and Haryana High Court.

Although in the present case, the age of the premises is not too old to make it unfit and unsafe for human habitation but some times the quality of material used for construction and the use of the premises made result into decreased the age of the premises, here also the Expert in his report has also opined that the shop in question is below `B' Class construction as per PW's knowns."

The tenant preferred an appeal before the Appellate Authority. The Appellate Authority directed the trial Court to appoint a Local Commissioner to opine on the issue as to whether the shop had become unfit and unsafe for human habitation. Shri Kuldip Chand, J.E., PWD (B&R) Samrala was appointed as Local Commissioner by the trial Court on the aforesaid direction. He had also submitted

a detailed inspection report which is on the record. He deposed that when he went to inspect the shop in dispute, the same was closed. He has stated in his report that the shop in dispute is in a dilapidated condition. The door of the shop was also in bad and broken condition. He also records in his report that the shop in dispute is not occupied by the tenant and was full of spoiled and unused articles. The report is a detailed one and relevant extract of the same is as hereunder:-

> "The shop in question was closed at the time of my inspection and the door of the shop was got opened from Krishan Dev tenant. The door of the shop was made of two wooden folded leafs in a very bad and a broken condition. Even there was no hinges fixed to the door and both the leafs were just placed over the door opening bounded with strings supported with bricks. Both the leafs of the doors were also covered with rough and dirty plastic sheets. The exact position is also shown in photographs mark ACLO. From the sport inspection it was clear that the shop in dispute is not occupied by the tenant which was full of spoiled and un-usable articles scattered in the shop. This position is clear from the photographs mark BC and S.
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> In front of the shop there is only one door opening of size 5'-6" x 5'-9". At the bottom of the door opening a brick masonary sill of 11 ½" height has been laid to prevent the surface/rain water/drain water to enter inside the shop. The floor level of the shop is 11 ½ " and 20" down than the sill level. In the middle of the floor it is settled down/sinked about 20" down than the sill level and the bricks of the flooring got damaged and attacked with Kallar. This sill has laid later on to check the entry of outside water which caused the settlement of floor by 8 ½ ".
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> The brick masonry of the walls is of standard size bricks laid

in mud mortar, cement pointed inside and outside, half inside portion of the shop is plastered earlier upto 3' in width from roof to down wards. North, south and west sides walls are of 1 ½ brick thick wall but East side wall is 9" thick upto 4 ½ " thick. Rest half of this wall is 4 ½" thick from floor level to roof level with pilasters (Brick Pillar). This East side wall also laid in mud mortar. Detailed measurements are shown in the site plan.

I observed that this East side wall is plumbing out towards Eastern side. I have checked this by falling sal and found 3" defected outwards. This wall can fall any time.

Due to permanent dampness inside the shop and continue leakage of water from roof during rains, all the bricks used in the wall are attacked with the Kallar and damaged the cement pointing inside and outside the walls of the shop.

Serious cracks have developed in the masonary under neath the roofing and masonary has pushed outwards due to thermal expansion and can cause fall of the roof any time. All the serious cracks developed at different positions, damaged cement pointing and plaster, raked out Joints etc. are also shown in the photographs attached as A to H.

It was also observed that the shop has second class mud roofing consisting of Rolled Steel Joists (R.S.J.), T.-irons, Brick tiles in single layer and mud faska over the tiles. On the top of roofing there is no tile terracing and the grass has been grown over there. The main R.S.J. 8" x 4" size has been hoisted over two Brick pilaster in the middle of the shop and three numbers Rolled Steel Joists of 6" x 3" size are placed over the main R.S.J. T-iron of 2" x 2" size placed over R.S.J. And embedded in wall having the load of bricks tile and

mud faska over it. All the R.S.J.'s and T-irons have badly rusted as they directly come in contact with water and Air. All the T-irons used in roofing are defected downwards.

The pocket A as shown in the site plan is of 4 ½ feet x 3 ½ feet inside has already been fell down. Pocket B surrounding the pocket A as mentioned in the site plan is defected and collapsed downwards 8" and the pocket C, 5" downwards respectively. The condition of the roofing is so dangerous that it can fall at any time. Even the transverse R.S.J. Of 6" x 3" size which is resting on the 4 ¼" thick East side wall is dislocated from its original position and turns 3" inside from the East South Corner. The pilaster (Brick pillar) under neath the main R.S.J. Have no concrete/steel bad plate resulting the serious cracks (as shown in photograph H) in the pilasters (brick pillars). The position of roofing is shown in plan and in the photographs IJK attached with the report.

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I am of the considered opinion that the property under dispute i.e. shop is a 'C' Class construction as per PWD norms. Serious cracks developed in the Bricks masonry, the floors of the shop are settled down, some portion of roofing has already collapsed and fell down. Rest portion of the roof deflecting downwards, all the parapets are damaged and fell down, the Eastern side transverse R.S.J. Is dislocated inwards, East side wall is plumbing outwards coupled with the other above stated facts, the shop in question is structurally unsafe and is unfit for human habitation which is even so clear from the facts that the tenant has already abandoned and stopped carrying on his business there. It may cause any casualty and

harm to the human life at any time."

On the basis of the said report, the Appellate Authority confirmed the findings recorded by the Rent Controller on this issue with the following observations:-

> ".....the shop in question is structurally unsafe and is unfit for human habitation. Photographs mark A to mark S numbering 19 submitted by the local commissioner PW6 Sh.Kuldeep Chand J.E. Also clearly shows that building is in dilapidated condition, RW3 Krishan Dev, appellant/tenant has also admitted in his cross examination that he has taken away the goods as the roof of the deori has also fallen down and there are cracks in the building, therefore the ld. trial court has rightly concluded that building is unfit and unsafe for human habitation and I fully agree with the findings of ld lower court that building is unfit and unsafe for human habitation due to reasons given above and the appellant/tenant is liable to be evicted on the very ground."

Learned counsel for the petitioner has assailed the aforesaid findings and argued that the tenant had in fact submitted objections against the report of the Local Commissioner which have not been considered. I, however, find no merit in this argument. In the present case there is ample material on the record to show that the shop has indeed become unfit and unsafe for human habitation. It is in a totally dilapidated condition. It has also come on the record that a portion of the roof has collapsed. Moreover, learned counsel for the respondent-landlord had stated that in fact the petitioner has removed his belongings from the shop and is no longer carrying on business there. Even though counsel for the petitioner controverted this averment, yet I am inclined to believe the same as this is also supported by the report of Shri Kuldeep Chand, J.E. where he states that from the spot inspection it was clear that the shop in dispute is not occupied by the tenant. For the aforesaid reasons I do not find any error in the findings recorded by the

learned Rent Controller and the Appellate Authority that the shop indeed has become unfit and unsafe for human habitation and consequently the tenant is liable to be evicted from the same.

Even apart from this it has been found by the Courts below that after the death of Balwinder Singh the original landlord, the present petitioners have stepped into the shoes of Balwinder Singh. Sukhdev Singh his son had raised a plea that he needed the shop for starting his own business of Dairy farming. He stated that he has graduated in Dairy farming and therefore wanted to start his own business. He did not own any other business premises except the shop in dispute. The shop in dispute was situated in front of the house of the respondents which can be conveniently used by them for Dairy farming.

On the other hand, the petitioner-tenant has argued that business of Dairy farming was not possible in the shop and no detail of the business to be started was given. It was stated that the grandfather of the respondent had 14/15 Killas of land and the respondents have also 12/13 Killas of land and therefore their requirement of personal necessity as set up was not bona fide.

The plea of personal necessity set up by the respondent-landlords was accepted by the learned Rent Controller by observing as hereunder:-

> ".... The petitioner Sukhdev Singh has proved his degree in graduation which is Ex.P41, the jamabandi for the year 1991-92 Ex.P42 showed that the father of the petitioner had 1 /2 share in the land. The petitioner has duly deposed on oath they do not own any other business premises except the shop in question. The perusal of Jamabandi Ex.P.42 showed that the petitioners who are married have only ½ share in the land which comes to a very small holding. Moreover, the petitioner has passed the Dairy Farming course and the requirement of the petitioner seems to be bona fide and genuine. Moreover the landlord need not to indicate the precise nature of

business which he wanted to set up in the premises. Here, I find support from 1995(2) All India Rent Control Journal 568 Supreme Court. The authority relied upon by the petitioners. Therefore, it is held that the petitioner requires the shop for his business purpose and his need is bonafide. ..."

This finding has been affirmed by the Appellate Authority. I do not find any error in this view taken by the Appellate Authority as well. Since one of the respondents has graduated in the field of Dairy farming he would have a bona fide desire to utilize that education by setting up a business of Dairy farming. Since this is the only shop which is owned by him his need is bona fide.

For the reasons aforementioned, I find no merit in this revision petition and the same is accordingly dismissed.

(P.S.PATWALIA)
JUDGE

October 13, 2006.

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